

Flashy language doesn't fly with Supreme Court

November 21 2016, by Ryan Black , Andy Henion



Credit: Michigan State University

Memo to all attorneys submitting legal briefs to the U.S. Supreme Court: Be subtle and your chances of winning go up significantly.

A new study co-authored by a Michigan State University political scientist finds briefs written with emotional language are much less

likely to win the justices' votes.

Is your client an "elderly widow seeking to retain her lifelong home"? Stick with that. Taking it further by claiming she is an "innocent victim of a heartless system that lacks compassion" is simply too much, said Ryan C. Black, MSU associate professor of political science and a Supreme Court expert.

"Our findings show that Supreme Court justices are less likely to side with briefs that use flashy adjectives and emotionally charged language," Black said. "Justices are trained in the traditional 'rule of law' approach that values objective, logical arguments."

The legal brief is a lawyer's main vehicle to persuade Supreme Court justices. The researchers used special software to determine how language was used in the legal briefs from 1,677 cases decided in the Supreme Court from 1984 to 2007. The software program flagged emotionally charged words such as "outrageous," "apprehensive," "wonderful" and "glorious."

The results were definitive. For petitioners, or those asking the court to review a case, using minimal emotional language was linked to a 29 percent increase in capturing a justice's vote. For respondents, or the party being sued, using minimal emotional language was tied to a 100 percent increase in winning a justice's vote.

The findings held even after taking into account other features associated with success, including case quality, attorney quality, oral arguments and the justices' ideological preferences.

Using emotional language decreases an attorney's credibility in the eyes of the justices, the study argues. Using objective, measured language presents a more trustworthy and credible message to the court.

Emotional language may have an even bigger impact on judges in lower state and federal courts, the study says, as judges in those courts tend to rely more heavily on briefs filed by the parties than do U.S. Supreme Court justices.

"Of course, we do not argue that attorneys should avoid all emotional language. That would likely result in a boring brief no one would read," the study says. "Rather, our argument is that attorneys should not make overt emotional appeals. The brief should be written in an objective tone with no flashy displays of adjectives intended to incite the court or enrage the opponent."

Provided by Michigan State University

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